

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 569/2004

Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

CORAM : A.P. Lavande,J
DATE : 1.12. 2006

Heard Mr. A. S. Kilor, learned counsel for the appellant
and Shr G.G. Modak, the learned counsel for the respondent no.
1. None for respondent no.2 though served.

2. After hearing the learned counsel for the parties, the
appeal is admitted on the following question of law.

“Whether both the courts below are legally justified
in passing an unconditional decree without
imposing a condition of obtaining mandatory
permission from the Collector to sell the suit
property under section 12 of the Maharashtra Re-
settlement of Project Displaced Persons Act,
1976 ?”

3. With the consent of the learned counsel for the parties
the appeal is taken up for final disposal.

4. This appeal is directed against the Judgment and
decree dated 7.8.2004 passed by the 4th Ad hoc Additional

District Judge, Wardha in Regular Civil Appeal No. 45/1997 dismissing the appeal filed by the appellant against the Judgment and decree dated 18.2.1997 passed by the Civil Judge, Junior Division, Arvi in Regular Civil Suit No. 12/76. The respondent no.1 is the original plaintiff who filed the suit for specific performance of agreement dated 21.1.1976 executed by the appellant in respect of the suit property. The respondent no.2 herein was defendant no.2 in the said suit. The defendant no.2 was joined inasmuch as after the agreement was entered into between the plaintiff and defendant no.1, the defendant no. 1 entered into second agreement for sale of the suit property with defendant no.2. The suit was contested and the trial court granted the decree for specific performance. The defendant no. 1 preferred appeal against the said decree which also came to be dismissed.

5. Mr. Kilor, the learned counsel appearing for the appellant/ original defendant no.1 submitted that both the courts below erred in law in passing the impugned decrees for specific performance of the contract since the respondent no.1 had not obtained permission from the Collector to sell the suit property as required under section 12 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (hereinafter referred to as "the Act"). According to Mr. Kilor, in the absence of permission from the Collector, the decree for specific performance could not have been passed.

6. Per contra, Mr. Modak, the learned counsel appearing

for the respondent no.1 submitted that the conditional decree for specific performance could be passed subject to obtaining of permission under section 12 of the Act and to that extent the decree be modified.

7. Having perused the Judgments passed by both the courts below and having considered the submissions made by the learned counsel for the parties, I find considerable merit in the submission of Mr. Modak. Perusal of the Judgment passed by the trial court discloses that the trial court directed the defendant no.1 to execute the sale-deed in respect of the suit property in favour of the plaintiff within two months or after taking ready crops standing in the land whichever to occur first. The lower appellate court upheld the Judgment and decree passed by the trial court. It is not disputed by the counsel for the parties that the plaintiff has applied to the Collector for permission under section 12 of the Act to purchase the suit property. The said permission was applied for by the plaintiff pursuant to the order passed by this Court in Writ Petition No. 95/84 which permitted the plaintiff to apply for permission to the Collector to purchase the suit property. No doubt Section 12 of the Act is icidirect loginmandatory and since admittedly the suit property is situated within the notified zone the same cannot be transferred without obtaining permission from the Collector under section 12 of the Act. This being the position, both the courts below have committed error in passing the decree in favour of the plaintiff for specific performance without insisting on permission from the Collector. However, that by

itself could not vitiate the decree passed by both the courts below. In my opinion, the proper course for both the courts below was to pass decree for specific performance subject to plaintiff obtaining permission from the Collector under section 12 of the Act. In my opinion, the decree for specific performance passed in favour of the plaintiff cannot be faulted. However, the same needs to be modified.

8. For the reasons aforesaid the decrees passed by both the courts below for specific performance are maintained. However, the defendant no.1 shall execute the registered sale-deed in favour of the plaintiff subject to grant of permission by the Collector under section 12 of the Act within two months from the date of grant of such permission or after taking ready crops standing in the land whichever would occur first. In case failure on the part of the appellant to execute the sale-deed after the Collector grants permission under section 12 of the Act, the plaintiff would be entitled to get the sale-deed executed and recover the expenses, except the stamp duty and registration charges, from the defendant no.1. The decree is modified in the aforesaid terms. The decree be drawn accordingly. The appeal stands disposed of in the aforesaid terms with no order as to costs.

Judge

patle